



# Missouri Sentencing Advisory Commission

## NOTE:

SMART SENTENCING INVOLVES USING THE LATEST IN STATISTICS, INFORMATION, RESEARCH FINDINGS AND EVIDENCED-BASED PRACTICE TO MAKE INFORMED DECISIONS ABOUT HOW TO PUNISH CRIMINAL BEHAVIOR.

THE SENTENCING ADVISORY COMMISSION HAS LAUNCHED THIS PERIODIC BULLETIN TO KEEP JUDICIAL DECISION MAKERS CURRENT AS TO THE LATEST INFORMATION RELATED TO SENTENCING PRACTICES AND THEIR IMPACTS. THE BULLETIN IS BEING DISTRIBUTED TO JUDGES, PROSECUTORS, PUBLIC DEFENDERS, PROBATION OFFICERS AND THE PUBLIC VIA EMAIL AND ON THE SAC WEB SITE AT [WWW.MOSAC.MO.GOV](http://WWW.MOSAC.MO.GOV).

COMMENTS AND SUGGESTIONS ARE WELCOME AND SHOULD BE SENT TO [SMART.SENTENCING@COURTS.MO.GOV](mailto:SMART.SENTENCING@COURTS.MO.GOV).

## MOSAC

*Is dedicated to supporting public safety, fairness and effectiveness in criminal sentencing.*

# SMART SENTENCING

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## *EVIDENCE-BASED SENTENCING TO REDUCE RECIDIVISM – A JUDGE’S REPORT*

Evidence-based sentencing is based on statistics ascertained through rigorous evaluation (i.e., use of control groups), multiple studies and systematic review. In other words, courts reasonably can rely on the findings of these studies to fashion sentences that are appropriate and are effective to reduce the risks of recidivism.

Judge Roger K. Warren, former trial judge and president emeritus of the National Center for State Courts, and J. Scott Johnston, chief probation supervisor for Missouri, presented a day-long program recently that was attended by judges, prosecutors, defense attorneys and probation officers explaining the principles and practices of evidence-based sentencing.

Judge Gary Oxenhandler, presiding judge of the 13th Judicial Circuit (Boone and Callaway counties), distributed a memorandum to the judges of his circuit about the program. His memo follows.

...we should pay more attention to what we know from...research [and]...endeavor to sentence in a meaningful manner...

I believed that the subject matter of the seminar warranted sharing what I learned with you. I am not suggesting the conclusions reached in the seminar and discussed in this memo should be followed by you; as always, you be the judge.

### A true-false test

First, please take the following true/false test: It will be helpful in understanding the theory of evidence-based sentencing:

1. The seriousness of committing the offense is more important than the offender's personal characteristics in predicting the likelihood of further crimes.
2. Jails and prisons are effective in changing offender behavior if the conditions are severe enough that offenders don't want to return.
3. The manner in which court proceedings are conducted is not a significant factor affecting offender recidivism.
4. Probation officers will be more effective if they have lower caseloads.
5. Programs like "scared straight" and "boot camp" are particularly effective for youthful offenders.
6. An offender doesn't need to be "motivated" for treatment to be successful.
7. The most cost-effective strategy is to deliver treatment to the extremely high-risk offender.
8. It is better to invest in treatment of low-risk offenders than high-risk offenders because their criminal tendencies are less hardened.
9. Intensive probation supervision tends to reduce recidivism better than regular probation supervision.

The correct answers are at the bottom of this memo.

### Avoiding recidivism: what works

Research in the past 20 years demonstrates that certain types of correctional programs clearly have been shown to be more effective in reducing recidivism. In predicting recidivism, we know that there are a number of static factors that are predictive. These are factors such as age, juvenile and adult criminal history, etc. Sentencing cannot change these static factors, but it can address other predictive factors that influence an offender's current behavior, values and attitudes.

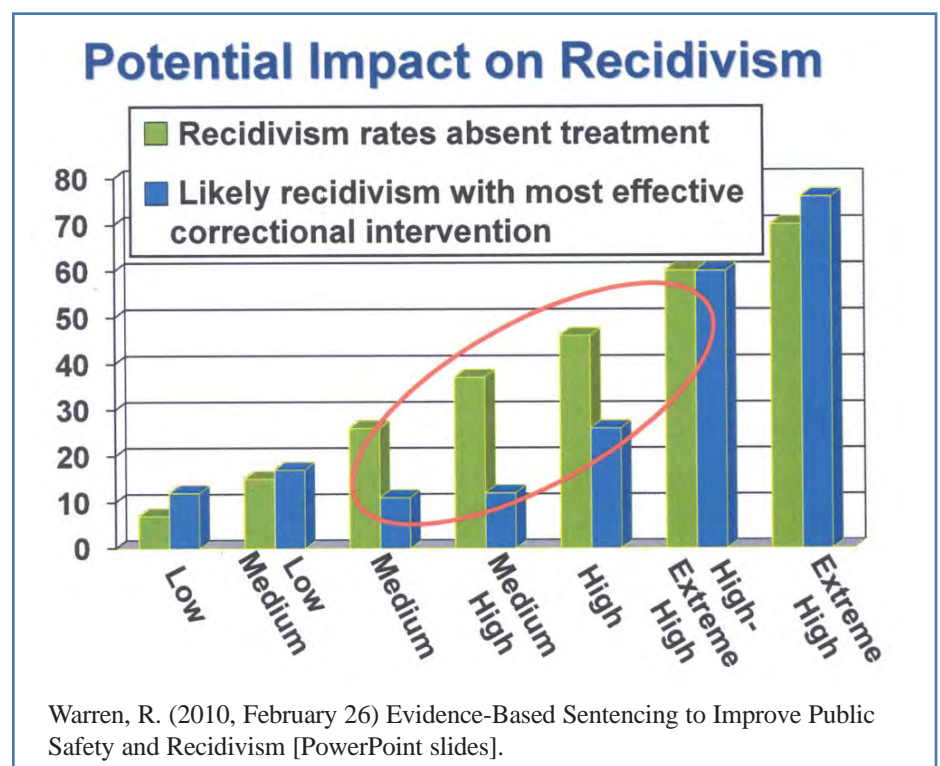
These predictive factors, which have been shown to be associated with recidivism and can be changed, are called criminogenic needs.

Which factors are actually criminogenic needs and which are not does not always match some of the commonly held perceptions and beliefs. For example, it is likely that many people quickly would identify an inadequate educational

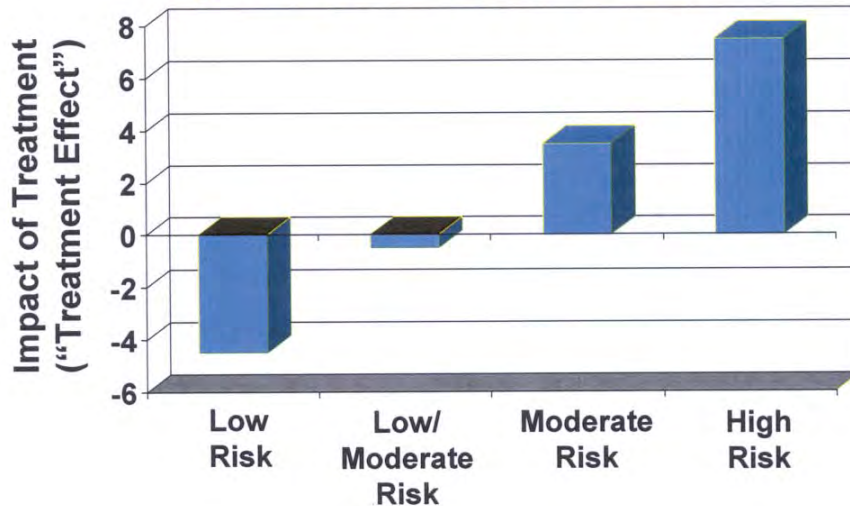
background as a criminogenic need. Research, however, has shown that educational level in and of itself is not predictive of recidivism. The major predictor is employment. So, if an offender's educational deficiencies impair his/her ability to secure and retain employment, then education is a criminogenic need; if the offender's educational achievement level does not negatively affect his/her ability to secure and retain employment, then education is not a criminogenic need, regardless of how low that educational level might be.

Briefly stated, research has shown the following types of needs to be criminogenic:

- Anti-social personality
- Anti-social attitudes and values
- Anti-social associates
- Family dysfunction
- Poor self-control, poor problem-solving skills
- Substance abuse



## The Impact of Treatment Varies by Offender Risk Level



Warren, R. (2010, February 26) Evidence-Based Sentencing to Improve Public Safety and Recidivism [PowerPoint slides].

- Lack of employment/employment skills
- Lack of pro-social/leisure time activities

### Avoiding recidivism: what does not work

At the same time, we know (that is, the research makes it clear) that the ordering of the following “sanctions” does not work to reduce recidivism:

- Punishment, sanctions or incarceration
- Specific deterrence, or fear-based programs such as “scared straight”
- Physical-challenge programs
- Military models of discipline and physical fitness such as “boot camps”
- Intensive supervision without treatment

Likewise, we know that the ordering of the following “service sanctions” does not work to reduce recidivism:

- Shaming programs
- Drug-education programs
- Drug-prevention classes focused on fear or emotional appeal
- Non-action oriented group counseling
- Bibliotherapy
- Freudian approaches
- Vague, unstructured rehabilitation programs
- Self-esteem programs
- Non skill-based education programs

On the other hand, we know that sentencing judges should:

- Avoid significant intervention with low-risk offenders.
- Target moderate- to high-risk offenders.
- Do not distract the offender and impede probation by imposing additional conditions of probation beyond those directly related in offender’s risk/needs.

### What should judges do?

So, when setting sentencing and setting probation conditions:

- Consider targeting the defendant’s criminogenic needs (those producing or tending produce crime or criminality).
- Avoid less relevant conditions.
- Be realistic.
- Provide flexibility to the probation officer.

### A final note

Of course, none of this means that we should disregard our individual sentencing philosophies. Further, none of this means that our individual sentencing philosophies are not one and the same as suggested by evidence-based sentencing. It just means that we should pay more attention to what we know from the research: We should endeavor to sentence in a meaningful manner, trying to target criminogenic needs. In fact, evidence-based sentencing is the kind of sentencing that several judges in our circuit – and many more throughout the state – use in their specialized court dockets.

### Quiz Answers:

All are false.